

*Court Of Appeals*  
*Fourth Court of Appeals District of Texas*  
*San Antonio*



**MEMORANDUM OPINION**

No. 04-08-00476-CR

**IN RE** Derek **BAILEY**  
Original Mandamus Proceeding<sup>1</sup>

PER CURIAM

Sitting: Alma L. López, Chief Justice  
Sandee Bryan Marion, Justice  
Rebecca Simmons, Justice

Delivered and Filed: July 23, 2008

PETITION FOR WRIT OF MANDAMUS DENIED

On July 7, 2008, relator filed a petition for writ of mandamus asking this court to order (1) the trial court to rule on his motion for new trial and (2) the district clerk to file and forward to this court a notice of appeal. Relator has not provided this court with a copy of his motion for new trial, which he alleges he filed on June 30, 2004. A motion for new trial “not timely ruled on by written order will be deemed denied” by operation of law. *See* TEX. R. APP. P. 21.8.

This court does not have jurisdiction to issue a writ of mandamus against a district clerk unless such writ is necessary to enforce our jurisdiction. *In re Coronado*, 980 S.W.2d 691, 692 (Tex. App.—San Antonio 1998, orig. proceeding). Relator has not asserted that the writ he is requesting is necessary to enforce our jurisdiction, nor has he provided a record that would support such an argument. *Walker*

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<sup>1</sup> This proceeding arises out of Cause No. 94-0857-CR, styled *The State of Texas v. Derek Bailey*, filed in the 25th Judicial District Court, Guadalupe County, Texas.

*v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (holding relator has burden of providing a sufficient record to establish right to mandamus relief).

For these reasons, this court has determined that relator is not entitled to the relief sought, and the petition is DENIED. TEX. R. APP. P. 52.8(a).

PER CURIAM

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